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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,765	07/28/2003	Jurgis Astrauskas	1007-0566	5786
<div>7590 08/08/2007 Maginot, Moore & Beck LLP Chase Tower, Suite 3250 111 Monument Circle Indianapolis, IN 46204-5109</div>			<div>EXAMINER TRAN, DZUNG D</div>	
			<div>ART UNIT 2613</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 08/08/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/628,765	Applicant(s) ASTRAUSKAS, JURGIS	
	Examiner Dzung D. Tran	Art Unit 2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-12 and 15-17 is/are allowed.
- 6) ☒ Claim(s) 1-6, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Merkle et al. U.S. Patent no. 5,442,344.

Regarding claims 1 and 13, Merkle discloses in Figure 4, a method/apparatus for bi-directional optical communication with a device external to the probe, the probe comprising:

a housing (e.g., optical window 22; col. 3, lines 11-12);

an optical transmitter 40 mounted within the housing that generates light pulses in accordance with an electrical data signal, the optical transmitter being operated not to generate a light pulse in the absence of the electrical data signal (col. 4, lines 9-33; Col. 4, line 63 to Col. 5, line 18); and

an optical receiver 42 mounted within the housing that generates an electrical data signal from an optical signal impinging upon the optical receiver, the optical

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receiver receiving a continuous light signal from an external device in the absence of a data signal at the external device (See Figure 4; col. 8, lines 11-15).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkle et al. U.S. Patent no. 5,442,344 in view of Meyer et al. U.S. Patent no. 5,933,812.

Regarding claim 2, Merkle does not specifically disclose the optical transmitter is a light emitting diode (LED) and the optical receiver is a phototransistor. Meyer discloses the optical transmitter mounted within the housing is a light emitting diode (LED) (col. 17, lines 22-23) and the optical receiver is a phototransistor (col. 17, lines 21-22). At the time of the invention was made, it would have been obvious to one of skill in the art to implement the well known LED as the optical transmitter and phototransistor as the optical receiver. One of skill in the art would have been motivated to do that in order to transmit and receive the high sensitive optical signal.

Regarding claims 3 and 4, Meyer discloses the LED is a standard LED wherein the LED generates an intense light pulse (col. 17, lines 22-23).

Regarding claim 5, Meyer discloses the phototransistor is a sensitive Phototransistor (col. 17, lines 21-22).

Regarding claim 6, Meyer discloses in Figures 1 and 17A, a coupler for securing the housing to an external device so the optical transmitter and the optical receiver are in close proximity to the external device to enable optical communication with at least one low intensity indicator light D1 LED, (col. 17, lines 59-60) of the external device.

Regarding claim 14, Meyer discloses in Figures 1 for securing an optical transmitter in close proximity to an external device (e.g., computer 60) to enable optical communication through the generated light pulses.

5. Claims 7-12 and 15-17 are allowed.

Response to Arguments

6. Applicant's arguments filed on 04/23/2007 have been fully considered but they are not persuasive.

A) Rejection claims 1 and 13 under 35 USC 103(a) as being unpatentable over Merkle et al. U.S. Patent no. 5,442,344 in view of Meyer et al. U.S. Patent no. 5,933,812.

Applicant argues that Merkle does not teaches "an optical receiver that receives a continuous light signal from an external device in the absence of a data signal at the external device. However, col. 8, lines 11-15 discloses the bi-directional between the

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probe and the appliance wherein the set up maintenance message is always transmitted by the probe and the appliance (i.e., when the data signal is not transmitted by the or the appliance).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung D Tran whose telephone number is (571) 272-3025. The examiner can normally be reached on 9:00 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzung Tran
08/02/2007


DZUNG TRAN
PRIMARY PATENT EXAMINER